



38 CFR Part 21

RIN 2900-AQ91

Modifications of Approval Requirements for Courses Designed to Prepare Individuals for Licensure or Certifications

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is amending its regulations to implement the provisions of the Jeff Miller and Richard Blumenthal Veterans Health Care and Benefits Improvement Act of 2016. This final rule adopts without change a proposed rule, which adds new approval requirements as specified in the statutory provisions for accredited and nonaccredited programs designed to prepare an individual for licensure and certification in a State, implements VA's new authority to waive the added approval requirements under certain circumstances and adjust the authority of a State approving agency to add new approval criteria, and adds a circumstance for disapproval of a program designed to prepare an individual for licensure and certification, as prescribed by the law we are implementing.

DATES: This rule is effective on [insert date 30 days after date of publication in the FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Cheryl Amitay, Chief, Policy and Regulation Development Staff, (225C), Education Service, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461-9800. (This is not a toll-free telephone number.)

SUPPLEMENTARY INFORMATION: On January 10, 2022, VA published a proposed rule in the *Federal Register*, 87 FR 1087, to amend its regulations to add new approval requirements for accredited and nonaccredited programs designed to prepare an

individual for licensure and certification in a State and to allow VA to waive the added approval requirements under certain circumstances. VA provided a 60-day comment period, which ended on March 10, 2022. We received two comments on the proposed amendments. Both comments supported the rulemaking, but requested clarifying information, which we provide below.

One comment requested that VA clarify the “undefined terms in 38 U.S.C. 3676 (approval of nonaccredited courses),” listing as undefined: “Quality,” “Qualifications,” “Financially Sound,” “Substantial Misrepresentation,” “Good Reputation and Character,” “Licensure and Certification,” “Such Additional Criteria...,” and “Administrative Support.” The commenter stated that the standards to protect student veterans and GI Bill funds in 38 U.S.C. 3676 have been undefined and rarely enforced resulting in the abuse of veteran benefits and taxpayer funds.

VA shares the concern for the protection of student veterans and their VA education benefits and wants to provide assurances that the standards in sec. 3676 are clearly defined and upheld. The regulatory amendments implementing the provisions of the Jeff Miller and Richard Blumenthal Veterans Healthcare and Benefits Improvement Act of 2016 will provide safeguards against abuse of veterans and their VA educational benefits with regard to programs that are designed to prepare an individual for licensure or certification. The new approval requirements will ensure that courses designed to prepare an individual for licensure or certification meet all instructional curriculum licensure and certification requirements, and courses designed to prepare an individual for employment meet the standards developed by a board or agency. Likewise, for courses designed to prepare an individual for licensure to practice law, the new approval requirements will ensure that the courses are accredited by a specialized accrediting agency for programs of legal education, or an association recognized by the

Department of Education. We believe our implementation in this rulemaking of the legal standards will ensure the protection of student Veterans and GI Bill funds, and further clarification is not necessary. Thus, we will not make any changes based on this comment.

Also, the State Approving Agency's (SAA) authority in new 38 CFR 21.4253(d) and 21.4254(c)(15) to impose additional approval criteria and the requirement in these provisions that SAAs consult with VA before imposing the new criteria to ensure that the criteria are necessary and equitable with regard to public, private, and proprietary educational institutions will provide protection against abuse of veterans benefits and taxpayer funds. In addition, the requirement in new 38 CFR 21.4259(e) to publicly disclose the conditions or requirements for obtaining the license, certification, or approval or face disapproval will protect veterans from being deceived about the skills they need for licensure or certification. Therefore, we do not think it is necessary to further define terms in sec. 3676 and will not make any additional changes based on these comments.

A second comment requested that VA collaborate with the Department of Education to determine common language and direction, where possible, when addressing institution responsibilities to manage student aid for postsecondary programs leading to a license or certification. VA is happy to consider the request to collaborate with the Department of Education when necessary to address an institution's responsibilities concerning managing student aid for programs that lead to licensure or certification to make any processes less confusing for students; however, we will not make any changes to the rule based on this comment as it is beyond the scope of this rulemaking.

This comment also requested clarification on implementation of proposed 38 CFR 21.4253(d)(9)(i) with regard to how VA will advise the SAA and the institution seeking State program approval to address interstate programs provided by distance education that lead to a license or certification. For SAA approval, § 21.4253(d)(9)(i) requires that a course designed to prepare an individual for licensure or certification in a State meet all instructional curriculum licensure or certification requirements of such State. Such courses are required to meet the same instructional curriculum licensure or certification requirements established by their State whether the program is conducted via distance learning or in person. The comment referenced confusion with regard to jurisdiction for obtaining SAA approval of “interstate distance education.” Section 21.4253(d)(9)(i) does not address SAA jurisdiction for purposes of approval of licensure or certifications courses, and therefore, we will not address the jurisdictional issue in this rulemaking. However, the general provisions in 38 CFR 21.4250, governing licensing and certification test approval and jurisdiction, remain applicable.

Additionally, this comment requested clarification concerning the specific additional requirements that must be part of the notifications that are intended by the requirement in proposed 38 CFR 21.4259(e) directing an SAA to disapprove a course leading to a license or certification when an institution fails to publicly disclose “any conditions or additional requirements, including training, experience, or examinations, required to obtain the license, certification, or approval for which the course of education is designed to provide preparation.” The additional requirements that must be part of the notifications refer to any requirements set by a state licensing or certifying agency, such as training required for licensure, certification, or approval, any prior experience that is a prerequisite for obtaining the license, certification, or approval, or any examinations that

must be taken before a student can obtain a license, certification, or approval. Because each state licensing or certifying agency establishes their own distinct requirements, we are unable to be more specific about the requirements in this rulemaking. If there are any requirements beyond training, prior experience, or examinations that a student must meet to obtain a particular license, certification, or approval, an institution or training facility must disclose those requirements. Thus, we will not make any changes based on this comment.

For the reasons stated above, VA will adopt the proposed rule as final, without change.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. The Office of Information and Regulatory Affairs has determined that this rule is not a significant regulatory action under Executive Order 12866. The Regulatory Impact Analysis associated with this rulemaking can be found as a supporting document at www.regulations.gov.

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the

Regulatory Flexibility Act (5 U.S.C. 601-612). VA has determined that, although there may be a number of educational training facilities and SAAs considered small entities which may be affected by this rule, they will not be significantly impacted by this rule.

Allowing waiver of the added approval requirements under certain circumstances, as well as requiring SAAs to present a written proposal to VA justifying the need for adding additional approval criteria for approving either accredited or nonaccredited programs, will likely have some impact on both educational training institutions and SAAs. However, the impact will be minimal. VA estimates that five educational facilities will request a waiver per year and that the estimated cost for any educational institution seeking a waiver will be less than \$300. Also, VA estimates that approximately eleven requests per year from SAAs will be received to add additional approval criteria and the estimated cost for SAAs making these requests will also be less than \$300. Accordingly, the number of schools and SAAs affected will not be substantial and the impact on each will not be significant. Therefore, under 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply.

The provisions requiring institutions to meet certain criteria to maintain eligibility for receipt of VA educational benefits could also entail costs to these institutions, such as the cost of making program changes to meet the new requirements or the loss of funding derived from VA benefit payments because of an inability to meet the new requirements or obtain a waiver. However, such provisions merely restate existing provisions of statute and thus will have no additional impact on such small entities. Therefore, under 5 U.S.C. 605(b), these provisions are exempt from the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. This final rule will have no such effect on State, local, and tribal governments, or on the private sector.

Paperwork Reduction Act

This final rule includes provisions constituting two new collections of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521) that require approval by the Office of Management and Budget (OMB). Accordingly, under 44 U.S.C. 3507(d), VA has submitted a copy of this rulemaking action to OMB for review and approval. OMB has reviewed and approved these new collections of information and assigned OMB Control Numbers 2900-0907, 2900-0908.

Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 et seq.), the Office of Information and Regulatory Affairs designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

List of Subjects in 38 CFR Part 21

Administrative practice and procedure, Armed forces, Claims, Colleges and universities, Education, Employment, Schools, Veteran readiness, Veterans, Vocational education.

Signing Authority:

Denis McDonough, Secretary of Veterans Affairs, approved this document on December 30, 2022, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Jeffrey M. Martin,

Assistant Director,

Office of Regulation Policy & Management,

Office of General Counsel,

Department of Veterans Affairs.

For the reasons stated in the preamble, the Department of Veterans Affairs amends 38 CFR part 21 as set forth below:

PART 21—VETERAN READINESS AND EMPLOYMENT AND EDUCATION

Subpart D – Administration of Educational Assistance Programs

1. The authority citation for part 21, subpart D, continues to read as follows:

Authority: 10 U.S.C. 2141 note, ch. 1606; 38 U.S.C. 501(a), chs. 30, 32, 33, 34, 35, 36, and as noted in specific sections.

2. Amend § 21.4253 by revising the last sentence of the introductory text of paragraph (d) and adding paragraphs (d)(9) and (10) to read as follows:

§ 21.4253 Accredited courses.

* * * * *

(d) * * *The State approving agency may approve the application of the school when the school and its accredited courses are found to have met the following criteria and additional reasonable criteria established by the State approving agency if the Secretary or designee, in consultation with the State approving agency, approves the additional criteria as necessary and equitable in its treatment of public, private, and proprietary for-profit educational institutions:

* * * * *

(9)(i) For a course designed to prepare an individual for licensure or certification in a State, the course meets all instructional curriculum licensure or certification requirements of such State.

(ii) For a course designed to prepare an individual for licensure to practice law in a State, the course is accredited by a specialized accrediting agency for programs of legal education or association recognized by the Secretary of Education under subpart 2 of part H of title IV of the Higher Education Act of 1965 (20 U.S.C. 1099b), from which recipients of law degrees from such accredited programs are eligible to sit for a bar examination in any State.

(iii) For a course designed to prepare an individual for employment pursuant to standards developed by a board or agency of a State in an occupation that requires approval, licensure, or certification, the course meets such standards.

(iv) An educational institution may apply, through their State approving agency of jurisdiction, to the Secretary or designee for a waiver of the requirements of this paragraph (d)(9). The State approving agency will forward an application for waiver, together with its recommendation for granting or denying the application, to the Secretary or designee. The Secretary or designee may grant a waiver upon a finding that all of the following criteria have been met:

(A) The educational institution is not accredited by an agency or association recognized by the Department of Education.

(B) The course did not meet the requirements of this paragraph (d)(9) at any time during the 2-year period preceding the date of the waiver.

(C) The waiver furthers the purposes of the educational assistance programs administered by VA or would further the education interests of individuals eligible for assistance under such programs.

(D) The educational institution does not provide any commission, bonus, or other incentive payment based directly or indirectly on success in securing enrollments or financial aid to any persons or entities engaged in any student recruiting or admission activities or in making decisions regarding the award of student financial assistance,

except for the recruitment of foreign students residing in foreign countries who are not eligible to receive Federal student assistance.

(10) Before requiring a school and its accredited courses to meet any additional criteria, the State approving agency must present a written proposal to the Secretary or designee justifying the need for the additional criteria and containing an attestation that the criteria will treat all schools equitably, regardless of whether they are public, private, or for-profit institutions. The Secretary or designee will determine whether the additional criteria are necessary and treat schools equitably based on the proposal and any additional information submitted. The Secretary or designee may change the determination at any time if, after implementation, it becomes apparent that the criteria are unnecessary or schools are treated inequitably under the criteria.

(i) The written proposal must contain a description of the need for the additional criteria and an explanation of how the imposition of the additional criteria would remedy the problem. The proposal must also contain a statement concerning whether State or Federal laws, regulations, or policies require the imposition of the additional criteria and an explanation of the consideration of any alternative means to achieve the same goal as the additional criteria.

(ii) The Secretary or designee may request such additional information from the State approving agency as the Secretary or designee deems appropriate before determining whether the criteria are necessary and treat schools equitably.

(Authority: 38 U.S.C. 3675(b)(3), 3676(c), (f))

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3. Amend § 21.4254 by revising paragraph (c)(14) and adding paragraph (c)(15) to read as follows:

§ 21.4254 Nonaccredited courses.

* * * * *

(c) * * *

(14)(i) For a course designed to prepare an individual for licensure or certification in a State, the course meets all instructional curriculum licensure or certification requirements of such State.

(ii) For a course designed to prepare an individual for licensure to practice law in a State, the course is accredited by a specialized accrediting agency for programs of legal education or association recognized by the Secretary of Education under subpart 2 of part H of title IV of the Higher Education Act of 1965 (20 U.S.C. 1099b), from which recipients of law degrees from such accredited programs are eligible to sit for a bar examination in any State.

(iii) For a course designed to prepare an individual for employment pursuant to standards developed by a board or agency of a State in an occupation that requires approval, licensure, or certification, the course meets such standards.

(iv) An educational institution may apply, through their State approving agency of jurisdiction, to the Secretary or designee for a waiver of the requirements of this paragraph (c)(14). The State approving agency will forward an application for waiver, together with its recommendation for granting or denying the application, to the Secretary or designee. The Secretary or designee may grant a waiver upon a finding that all of the following criteria have been met:

(A) The educational institution is not accredited by an agency or association recognized by the Department of Education.

(B) The course did not meet the requirements of this paragraph (c)(14) at any time during the 2-year period preceding the date of the waiver.

(C) The waiver furthers the purposes of the educational assistance programs administered by VA or would further the education interests of individuals eligible for assistance under such programs.

(D) The educational institution does not provide any commission, bonus, or other incentive payment based directly or indirectly on success in securing enrollments or financial aid to any persons or entities engaged in any student recruiting or admission activities or in making decisions regarding the award of student financial assistance, except for the recruitment of foreign students residing in foreign countries who are not eligible to receive Federal student assistance.

(15) Such additional reasonable criteria as may be deemed necessary by the State approving agency if the Secretary or designee, in consultation with the State approving agency, approves the additional criteria as necessary and equitable in its treatment of public, private, and proprietary for-profit educational institutions. The Secretary or designee will determine whether the additional criteria are necessary and treat schools equitably based on a proposal and any additional information submitted.

(i) Before requiring a school and its nonaccredited courses to meet any additional criteria, the State approving agency must present a written proposal to the Secretary or designee justifying the need for the additional criteria and containing an attestation that the criteria will treat all schools equitably, regardless of whether they are public, private or for-profit institutions. The written proposal must contain a description of the need for the additional criteria and an explanation of how the imposition of the additional criteria would remedy the problem. The proposal must also contain a statement concerning whether State or Federal laws, regulations, or policies require the imposition of the additional criteria and an explanation of the consideration of any alternative means to achieve the same goal as the additional criteria.

(ii) The Secretary or designee may request such additional information from the State approving agency as the Secretary or designee deems appropriate before determining whether the criteria are necessary and treat schools equitably.

(iii) The Secretary or designee may change the determination at any time if, after implementation, it becomes apparent that the criteria are unnecessary or schools are treated inequitably under the criteria.

(Authority: 38 U.S.C. 3676(c), (f))

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4. Amend § 21.4259 by adding paragraph (e) to read as follows:

§ 21.4259 Suspension or disapproval.

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(e) The Secretary or the appropriate State approving agency will disapprove a licensing and certification program of education if the educational institution providing the program of education fails to publicly disclose in a prominent manner any conditions or additional requirements, including training, experience, or examinations required to obtain the license, certification, or approval for which the program of education is designed to provide preparation.

(1) The Secretary will determine whether a disclosure is sufficiently prominent; however, at a minimum, the educational institution must publish the conditions or requirements on a publicly facing website and in their catalog, and include them in any publication (regardless of medium) which explicitly mentions “educational assistance benefits for servicemembers (and their dependents) or veterans (and their dependents)” or which, in the view of the Secretary, is intended for VA educational assistance beneficiaries.

(2) Individuals continuously enrolled at the same educational institution pursuing a program of education subject to disapproval under paragraph (e) of this section may complete the program of education.

(Authority: 38 U.S.C. 3679(d))

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